

FILED

MAR 14 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JESUS HUMBERTO-CARDENAS,

Defendant - Appellant.

No. 04-30465

D.C. No. CR-00-00206-RHW

MEMORANDUM^{*}

Appeal from the United States District Court
for the Eastern District of Washington
Robert H. Whaley, District Judge, Presiding

Submitted March 8, 2006^{**}

Before: CANBY, BEEZER, and KOZINSKI, Circuit Judges.

Jesus Humberto-Cardenas appeals from the 87-month sentence imposed after pleading guilty to conspiracy to possess with intent to distribute over 50 grams of methamphetamine, in violation of 21 U.S.C. § 846. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we remand.

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Because appellant was sentenced under the then-mandatory Sentencing Guidelines, and we cannot reliably determine from the record whether the sentence imposed would have been materially different had the district court known that the Guidelines were advisory, we remand to the sentencing court for further proceedings consistent with *United States v. Ameline*, 409 F.3d 1073, 1084-85 (9th Cir. 2005) (en banc). *See United States v. Moreno-Hernandez*, 419 F.3d 906, 916 (9th Cir. 2005).

REMANDED.